TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1926

No. [redacted] 61

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

FILED APRIL 12, 1926

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SUPREME COURT OF THE UNITED STATES

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No. 357

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[fol. 1] **IN COURT OF CLAIMS OF THE UNITED STATES**

No. 33824

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY

vs.

THE UNITED STATES

I. HISTORY OF PROCEEDINGS

On July 23, 1917, the plaintiff filed its original petition.

On September 22, 1917, a general traverse was entered under Rule 34.

On May 1, 1922, the plaintiff, by leave of court filed its amended and supplemental petition.

Said amended and supplemental petition is as follows:

II. AMENDED AND SUPPLEMENTAL PETITION—Filed May 1, 1922

Petitioner files this, its amended and supplemental petition, and says:

I

Petitioner is a corporation incorporated under the laws of the State of Kentucky and owns and operates a system of railroads in the States of Kentucky, Indiana, Mississippi, and Louisiana, Illinois, Virginia, Tennessee, Georgia, Alabama, and Florida. Two of petitioner's lines of railroad, extending from Decatur, in the State of Alabama to Pensacola in the State of Florida and from Pensacola to River Junction, also in the State of Florida, were built with the aid of land granted to divers predecessors in title to petitioner by acts of Congress approved May 17, 1856, June 8, 1872; June 16, 1874; March 3, 1879 (11 Stats. L. pp. 15, 17, 300; 16 Stats. L., pp. 45 and 580; 17 Stats. L., p. 340; 16 Stats. L. pp. 74 and 453; 21 Stats. L., p. 390). None of petitioner's other lines was aided by any grant of lands of the United States.

Petitioner has always been loyal to the Government of the United States and never aided or abetted rebellion or insurrection against the same.

II

Between the 10th day of August in the year 1911, and the 31st [fol. 2] day of December in the year 1916, petitioner, at the request of the proper officers and agents of the United States, transported on and over its said lines of railroad many officers and enlisted men of the United States Army and Navy; the details of such transportation being set out on bills of particulars heretofore furnished and on which reports of the proper executive departments of the United States government have been made and are on file in this case.

III

The rates ordinarily applicable to such movements made by commercial tariffs, duly filed with the Interstate Commerce Commission and published as required by law. There also were in effect at said times, approved by the Interstate Commerce Commission and duly published, and applying in those regions wherein said movements occurred, tariffs fixing for private passengers of certain named classes, traveling in parties of ten or more, special reduced rates to be paid in cash at the time of issuance of tickets for the travel and not to be subject to land-grant or other deductions. With respect to said movements, in numbers of ten passengers or more, petitioner's officers often agreed that such party rates should apply without diminution for land-grant. Such party rates in those cases were as low as or lower than any that could be made by proper land-grant deductions from the rates of the ordinary tariffs. The purposes, manner and carrier's expenses in transporting said United States troops were radically different from those of said private-party transportation.

IV

Some of said movements were from Vandiver Park, which was an army camp near to Montgomery, Alabama, a junction point on [fol. 3] one of petitioner's said lines. There was in effect at that time a tariff applicable to traffic for account of the United States which fixed, in addition to passenger fares, a charge of five dollars ($5.00) per car for switching between said Vandiver Park and Montgomery (Western Railway of Alabama Switching Tariff No. 362, Supplement No. 1). In said movements from Vandiver Park a total of twenty-four cars were switched from that point to Montgomery.

V

Others of said movements were to Camp Shelby, in Mississippi, or Camp Sheridan, in Alabama, which also were army camps. For and in each of said movements there was required by the proper United States officer, and was furnished by petitioner and used, a special train. Said movements occurred in September and October, 1917. There was in effect at that time, applicable solely to traffic for account of the United States in those sections, a tariff which fixed (a) between Hattiesburg, in Mississippi, and Camp Shelby charges of ten dollars ($10.00) for each passenger car and five dollars ($5.00) for each baggage car; and (b) between Montgomery and Camp Sheridan, charges of five dollars ($5.00) for each passenger car and three dollars ($3.00) for each baggage car, besides special, low rates of individual fares to or from Hattiesburg and Montgomery; those respectively being the junction points, on railroad main lines, for said camps. Said tariff fixed also a charge of fifty dollars ($50.00) for a special train (Table A of C. D. Wayne, Acting Agent of Southeastern Tariff Association, effected July 1, 1917). In said movements a total of eleven (11) special trains were used and other cars

were used to the total amount, at said rates, of one hundred and eighty-nine dollars ($189.00).

[fol. 4] VI

In petitioner's bills rendered to the proper officers of the United States for said transportation there were claimed either said full party rates or the full rates of the ordinary tariffs, besides said special charges for switching or for special trains or individual cars to or from said camps; but, notwithstanding the provisions of said tariffs, said officers of the United States allowed and paid to petitioner for each movement the rate of said private-party tariffs less a deduction for land-grant at the same proportion that was due out of the full tariff rate; and they disallowed and withheld entirely said amounts claimed with respect to such switching or to said special trains and individual cars. Petitioner, in accepting payment upon such settlements, protested against such disallowances.

VII

The aggregate amounts so unlawfully deducted from the accounts of petitioner for the transportation so furnished are twenty-four thousand seven hundred and fifty dollars ($24,750.00), deduction in rates; one hundred and twenty dollars ($120.00), switching charges, and seven hundred and thirty-nine dollars ($739.00), charges for special trains or cars.

Petitioner prays judgment against the United States in the sum of twenty-five thousand six hundred and nine dollars ($25,609.00), the same being wholly unpaid and petitioner's right thereto not having been assigned either wholly or in part.

The Louisville and Nashville Railroad Company, by Benjamin Carter, Its Attorney-in-fact.

[fol. 5] Sworn to by Benj. Carter. Jurat omitted in printing.

[fol. 6] III. General Traverse

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered under Rule 34.

IV. Submission of Case

On February 11, 1924, this case was submitted on merits by Mr. Benjamin Carter, for the plaintiff, and by Mr. Lisle A. Smith, for the defendant, without argument.

V. History of Proceedings

On April 28, 1924, the court filed findings of fact and conclusion of law and entered judgment for plaintiff in the sum of $120.00, with an opinion by Campbell, Ch. J.

On June 27, 1924, the plaintiff filed a motion to amend the findings of fact.

On October 20, 1924, the court entered an order filing amended findings of fact, and the findings as thus amended were adopted as the findings of the court, the judgment with opinion heretofore rendered to stand.

Said findings of fact, as amended, conclusion of law and opinion of the court are as follows:

[fol. 7] **VI. Findings of Fact, as Amended, Conclusion of Law, and Opinion of the Court by Campbell, Ch. J.**—Entered Oct. 20, 1924

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Amended Findings of Fact

I

The plaintiff is a corporation duly incorporated under the laws of the State of Kentucky, and during the times of the different transactions hereinafter described in these findings of fact owned and operated and still owns and operates a system of railroads in said State and the States of Indiana, Illinois, Virginia, Tennessee, Georgia, Alabama, Mississippi, and Florida. Two of plaintiff's lines, one extending from Decatur, Alabama, to Pensacola, Florida, and the other from Pensacola to River Junction, Florida, were built with the aid of public land granted by Congress to the predecessor in title of the plaintiff company.

II

From August 10, 1911, to April 4, 1917, dates inclusive, large numbers of officers and enlisted men of the United States Army and Navy were transported by plaintiff over its lines on Government transportation requests issued by proper authority. In some instances a single passenger would be transported on a transportation request, sometimes more than one but less than ten would be transported on one transportation request, and sometimes ten or a greater number would be transported on one transportation request.

III

There were individual passenger rates for the public in force on plaintiff's lines at the time the transportation in question was furnished, fixed tariffs being duly filed with the Interstate Commerce

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Commission, as required by law. There was in addition to such [fol. 8] individual tariff rates, certain party rates open to the public in force on plaintiff's lines at that time by which ten or more passengers, travelling by scheduled trains, were entitled to reduced rates. Some of these party rate tariffs provided that cash should be paid at the time the tickets were issued and that there should be no land-grant deductions made from such party rates. Others provided neither for cash at the time the tickets were furnished nor against land-grant deductions from such party rates.

IV

The plaintiff as the initial carrier presented its bills to the proper disbur-ing officers on forms prescribed by the Comptroller of the Treasury, and obtained by requisition on the Public Printer who was required to print and distribute such voucher forms. Where ten or more persons were transported in a troop movement, the plaintiff billed them at individual rates less proper land grant deductions where the rates thus obtained were the lowest rates; where such net rates were equal to or higher than party rates in force, party rates without land grant deductions were used by plaintiff in its bills. When plaintiff's bills came before the accounting officers for settlement land grant deductions were made from party rates, and where individual rates with land grant deductions were made, party rates with land grant deductions were applied by said accounting officers. The plaintiff filed protests against the deductions from every one of plaintiff's bills except Bill No. 2402. There were two forms of vouchers prescribed as aforesaid, procurable from the Public Printer, (1) one for use where no land-grant was involved, with columns each for class, number of passengers, rate, and amount, and (2) one where land-grant was involved with columns each for total mileage, land-grant mileage, class, number of passengers, rate, gross amount, amount to be deducted account of land-grant, and amount claimed. On both forms was the following certificate: "I certify that the above account is correct and just; that the services have been rendered as stated; that payment therefor has not been received; and that the rates charged are not in excess of the lowest net rates available for the Government, based on tariffs effective the date of service." Where plaintiff made no land-grant deductions it made out its bills on the first form described above; where it made land-grant deductions it made out its bills on the second form described above.

V

The land grant deductions made from plaintiff's bills under party tariffs in force providing for payment of cash at the time the tickets were furnished and against land grant deductions, amounted in the aggregate to $23,399.26. The land grant deductions made from plaintiff's bills under party tariffs in force, making no provision for payment of cash at the time the tickets were furnished, nor against deductions for land grant, amounted to $141.44.

VI

The total land grant deductions made from the different items of bill No. 2402 by the accounting officers amounted to $1,789.36, and this amount is embraced in the sum of $23,399.26, set out in Finding V. There were no protests made by plaintiff against the deductions from different items of said bill No. 2402.

VII

There was in force on plaintiff's lines during the time of the different troop movements mentioned above, a tariff described as the "Western Railway of Alabama Switching Tariff, No. 362," and "Supplement No. 1" thereto, which fixed a switching charge of $5 per car between Vandiver Park (Camp Sheridan), an Army camp, and Montgomery, Alabama. During the troop movements described above, twenty-four cars of plaintiff loaded with troops were switched [fol. 9] between said camp and Montgomery. The tickets issued to said troops started from or ended at the station in Montgomery, and the travel between Montgomery and Vandiver Park, four miles distant, if switching charges are not allowed, would be performed without compensation. The total switching charges amount to $120.

VIII

Bill No. 2675 was rendered to the Army disbursing officer for the transportation of 1,988 United States troops on September 15 and 26, 1917, as special service charges between Hattiesburg and Camp Shelby, Mississippi, in addition to their per capita fares, for one standard sleeper, $10; three 16-section tourist cars, $30; forty-six coaches, $460; five standard Pullmans, $50; fifteen baggage cars, $75; aggregating $625. Bill No. P-2685 was rendered to said disbursing officer for the transportation of 134 passengers on September 28, 1917, as the min-mum special train service charge between Hattiesburg and Camp Shelby, Mississippi, in addition to the per capita fares, for three coaches and one baggage car, $50, aggregating for the two bills $675. There is nothing in the evidence to show that special or expedited train service between Hattiesburg and Camp Shelby was requested by the Government.

The tariff in force when said troops were transported was as follows:

Table A—Effective July 1, 1917—Hattiesburg, Miss. (Camp Shelby)

Basis for Making Through Fares

In constructing through fares and distances to Camp Shelby, Miss., add the following amounts and distances published to Hattiesburg, Miss.:

One-way individual, 32¢.

One-way per capita party (10 or more on one ticket), 32¢.

Distance from Hattiesburg, Miss., to Government camp station, 10.5 miles.

Division Requirements

On traffic received from or delivered to connecting lines at Hattiesburg, Miss., the Mississippi Central Railroad and Gulf & Ship Island R. R. will require the following specifics between Hattiesburg and Camp Shelby in each direction:

For individuals, 32¢ per capita.

For parties (10 or more on one ticket), 32¢ per capita.

For each passenger coach, dining or sleeping car, in service, $10.

For each baggage car in service, $5.

Special train service is necessary in all cases; minimum charges $50 from Hattiesburg, Miss., to Camp Shelby, Miss.

IX

Bills Nos. P-2701 and 2703 were rendered to the said disbursing officer for the transportation of 460 United States troops, on October [fol. 10] 9 and 12, 1917, as special service charges between Montgomery and Camp Sheridan, Alabama, in addition to their per capita fares, for nine tourist sleepers, $45.00, three baggage cars, $9.00, and two coaches, $10.00, a total for the two bills of $64.00. There is nothing in the evidence to show that special or expedited train service between Montgomery and Camp Sheridan was requested by the Government.

The tariff in force when said troops were transported was as follows:

Table A—Effective July 1, 1917—Vandiver Park, Ala. (Camp Sheridan)

Basis for Making Through Fares

Eastbound.—In constructing through fares and distances to Vandiver Park, Ala., add the following amounts and distances to fares and distances published to Montgomery, Ala., not to exceed fares and distances published to Opelika, Ala.:

One-way individual, 10¢.

One-way per capita party (10 or more on one ticket), 10¢.

Westbound.—In constructing through fares and distances to Vandiver Park, Ala., use fares and distances published to Montgomery, Ala.

Division Requirements

On traffic received from or delivered to connecting lines at Montgomery, Ala., the Western Ry. of Ala., will require the following specifics between Montgomery, Ala., and Vandiver Park, Ala., in each direction.

For individuals, 10¢ per capita.

For parties (10 or more on one ticket) 10¢ per capita.

For each pas-enger coach, dining, parlor, or sleeping car, in service, $5 the fare in each car to apply on minimum.

Where special train service is necessary, minimum of $50.00 will be required in each direction, whether one car or more.

For each baggage car, in service, $3.00.

Conclusion of Law

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover the sum of $120. It is therefore adjusted and ordered that the plaintiff recover of and from the United States the sum of one hundred and twenty dollars ($120).

Opinion

Campbell, Chief Justice, delivered the opinion of the court:

The plaintiff bases its claim for the refund of land-grant deductions upon the requirements in certain party rate tariffs of cash at the time tickets are furnished with no land-grant deductions from the rates fixed in such tariffs. Its contention is that the requirement of cash payments excludes any idea of land-grant deductions from charges at party rates. But this contention can not be upheld. Nor [fol. 11] can the Government be excluded from taking the tariff rates less land-grant deductions. The plaintiff, when the transportation was furnished, did not stand upon the cash requirement, but, as initial carrier, issued the necessary tickets and sent in its bills for the transportation to the disbursing officer on a credit basis. The Government from the very nature of things can not be required to deal with the railroads on a cash basis for transportation. The ticket agents are unable to figure out land-grant deductions, and it would take time and delay to have the rates figured out by experts. The law contemplates that payments by the Government shall be made only after the bills have received the approval of certain designated officials. The bills must go through a regular routine inspection. This court held in Louisville & Nashville Railroad Co. v. United States, 58 Ct. Cls. 622, that failure of the Government to pay cash for tickets, as required by certain tariffs in force, did not relieve the company from land-grant deductions. See also Illinois Central R. R. Co. v. United States, 58 C. Cls. 182.

As to the items growing out of so much of the transportation as was between Montgomery and Camp Sheridan and between Hattiesburg and Camp Shelby, we can not agree with the contention that there was any special or expedited service contracted for on the one hand, or an additional special service provided for in the tariffs on the other hand. The tariffs provided for a through rate to Montgomery or to Hattiesburg as the case may be, and also provided that in constructing through rates to the camps in question certain amounts and distances should be added to the published rates to Montgomery or Hattiesburg. The amount to be added for individual fare is settled and the amount for per capita party of ten or more on

one ticket is stated. These rates are stated for the benefit of the connecting lines as well as for the public. When constructed on the prescribed basis, the rates would be those at which the individual or party would be entitled to transportation to the point of destination, one of the camps. The accounting officers have proceeded in such cases upon the view that the reference to "special train service" under the heading in the tariff of "Division requirements" is a matter between the carriers themselves and provides for the absorption by the terminal carrier of the minimum requirement on account of the special train service, when the revenues exceeded the minimum requirement, and the taking care of this minimum requirement by other carriers where the revenue is not equal to or in excess of this minimum. It seems to us the view of the accounting officers is the more reasonable one. Certainly the rate provided for an individual or for a party of ten or more individuals would apply to the individual or party, and these would not have to pay more because of the stated "special train service." Nor does the Government have to pay more than these party rates. There was no special or expedited service contracted for.

As to the switching charge from Montgomery to Camp Sheridan, the tickets on which the troops moved called for and ended at Montgomery. The plaintiff is entitled to be paid for the additional transportation from Montgomery to the camp.

Hay, Judge; Downey, Judge; and Booth, Judge, concur.

[fol. 12] VII. JUDGMENT

At a Court of Claims held in the City of Washington on the 20th day of October, A. D., 1924, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises, find in favor of the plaintiff, and do order and adjudge, that the plaintiff, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of One Hundred and twenty dollars ($120.00).

By the Court.

VIII. PETITION FOR APPEAL—Filed January 14, 1925

Claimant shows to the court that this case involves more than twenty-five thousand dollars ($25,000.00); that on the 28th day of April, 1924, the court rendered a judgment in claimant's favor for one hundred and twenty dollars ($120.00) and filed findings of fact; that claimant filed a motion for an amendment of said findings and on the 20th day of October, 1924, the court entered an

order making said amendment. Claimant hereby applies for an appeal to the United States Supreme Court from said judgment.

Benjamin Carter, Attorney for Claimant.

IX. Order Allowing Appeal

It is ordered by the Court this 19th day of January, 1925, that the plaintiff's application for appeal be and the same is allowed.

[fol. 13] In Court of Claims

[Title omitted]

Clerk's Certificate

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the submission of case; of the findings of fact, conclusion of law and opinion of the court by Campbell, Ch. J.; of the judgment of the court; of the plaintiff's application for an appeal to the Supreme Court of the United States; of the order of the court allowing said application.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this 23rd. day of January, A. D., 1925.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. (Seal of the Court of Claims.)

Endorsed on cover: File No. 31,029. Court of Claims. Term No. 357. The Louisville & Nashville Railroad Company, appellant, vs. The United States. Filed April 13, 1925. File No. 31,029.